

INTELLIGENCE COMMUNITY PERSONNEL STUDY

7F

INTELLIGENCE UNIQUENESS

Background

With the passage of the National Security Act of 1947 and the Central Intelligence Act of 1949 the Congress recognized the need to maintain a secret foreign intelligence program. Congress provided extraordinary authorities to the Director of Central Intelligence (DCI) for protecting sources and methods from unauthorized disclosure and for coordinating foreign intelligence collection.

"Uniqueness" of intelligence is founded on three central themes: secrecy of operation, protection of sources and methods, and National Security. The following excerpt from an April 1, 1988 Court of Appeals, Fourth District, in U.S. v Morison capsulizes the substance of this point:

"National Security is Public Security, not government security from informed criticism.... Intelligence gathering is critical to the formation of sound (public) policy and becomes more so every year with the refinement of technology and growing threat of terrorism. Electronic surveillance prevents surprise attack by hostile forces and facilitates international peace-keeping and arms control efforts. Confidential diplomatic exchanges are the essence of international relations. None of these activities can go forward without secrecy. When the identity of intelligence agents are known, they may be killed. When our surveillance activities are revealed, counter measures can be taken to circumvent them. When other nations fear that confidences exchanged at the bargaining table will only become embarrassments in the press, our diplomats are left helpless. When terrorists are advised of our intelligence, they can avoid apprehension and escape retribution."

"Uniqueness" of intelligence work has been repeatedly recognized in public records. For example, Senator Durenburger, addressing the U.S. Senate as Chair of the Senate Select Committee on Intelligence, stated, after a detailed listing to the Senate of the impact of intelligence work on IC personnel and families, "In short, intelligence is unlike any other work in government ... their responsibilities are unique". Similarly, the court order rendered in the Pittman case held, "the CIA, because of its unique and specialized function, was granted by Congress authority to formulate its own personnel policies consistent with the unique needs of the Agency."

This "uniqueness" is formally recognized in that all principal intelligence agencies covered by the National Academy of Public Administration (NAPA) study (except INR/State) are excepted

by law or executive authority from all or part of Title V of the competitive civil service on various grounds, including (a) the special sensitivity of classified missions, (b) consequent requirements for secrecy, (c) a high degree of personnel selectivity for specialized tasks, and (d) need to protect the covert nature and identity of foreign intelligence operatives. These exceptions have been granted over time, i.e., from a 1941 Executive Order excepting the FBI; to direct legislated exclusions for CIA under the National Security Act 1947 and CIA Act 1949; the National Security Agency under the National Security Act of 1959 (Public Laws 86-36 as amended) and PL 88-290; and the Defense Intelligence Agency and Military Intelligence Agencies under Public Laws 98-618, 99-145, and 99-569.

Further, the record contains Comptroller general decisions and OPM decisions over time which also recognize the need for exception. Congress has provided selective exemption to intelligence agencies from reporting requirements levied by and on other executive agencies with respect to various functions. Another example is that all of the main intelligence agencies exercise independent policies and procedures for terminating employees and these have been upheld by the courts.

To further illustrate the uniqueness argument, the attached table, lists the restrictions that each IC agency places on its staff because of the nature of the intelligence mission and compares these restrictions to the non-intelligence executive branch agencies.

Discussion

It is true that the IC agencies are substantially different from other government and private organizations. However, many other government organizations can establish their uniqueness and also limitations placed on their staff due to agency mission. The Security and Exchange Commission lawyer working on a stock market insider trading case faces restrictions on social life, on taking work home, and on making financial investments. The National Institutes of Health AIDS researcher faces unique personal risks in the laboratory. The Bureau of Prisons requires frequent geographic moves of professional staff who aspire to senior positions in the Bureau a requirement that creates significant family strains.

These and other agencies can properly claim that their uniqueness and the demands placed on their staff require special personnel policies. Also it must be recognized that the nature of the staff and the risks faced by the staff in the IC agencies have changed significantly over the past 40 years. The increasingly technical nature of intelligence activities has created a significantly different workforce than existed when CIA was established.

The "Non Official Cover" positions and the para-military operations officers are now a far smaller proportion of the total IC community staff. Much of the current staff have skills and perform work comparable in many ways to that performed in other government agencies and private sector organizations. And in fact, the arguments made in recent years for special personnel authorities for DIA and the military intelligence agencies have not been based on the uniqueness of the intelligence activity but rather on the need for greater personnel management flexibility in order to be able to better able to compete with the other IC agencies for quality staff.

For example, in a period when Federal pay has been progressively less competitive, CIA and NSA have successfully hired and retained, both in numbers and quality, engineers, computer scientists, and mathematicians. This success is largely due to the ability of these agencies to independently recruit for staff without the constraints of the general civil service system, including the ability to establish occupationally specific salary schedules.

Similarly, the ability to dismiss staff with relative ease, while not used in a large number of cases, has enhanced the ability to manage these organizations.

NAPA Staff Views

It is clear that the special personnel authority granted to the IC agencies has been increasingly used to meet market, and to some extent employee morale, needs. These concerns appear to far out-weigh security and personal risk considerations.

In the judgment of the staff, the change in the nature of the intelligence activity calls for a change in the criteria for establishing special personnel authorities for the IC agencies. A distinction needs to be made between the personnel management flexibilities needed to effectively manage and the need for special pay and benefits for some staff engaged in selected aspects of intelligence work.

It is clearly essential to the IC agencies that these personnel management flexibilities which enhance the ability to manage these organizations be retained. However a distinction should be made between this essential management flexibility and the need for special treatment in terms of better benefits for IC staff because of their uniqueness.

Special treatment of IC staff, as compared to non-IC civil servants, should be limited to those persons in the IC agencies who are truly unique. This will require developing a rationale to identify people warranting special treatment. For example, the need to work in deep cover or where post-retirement employment opportunities are severely limited might call for special treatment for the affected staff.

Any rationale developed will have to be regularly reexamined. However the overall guide should be to limit truly special treatment of staff to the relatively few who truly serve in unique positions and situations.

The SSCI and the HPSCI should authorize special pay and benefits only for IC staff who meet the defined rationale. Other staff should receive benefits comparable to the overall civil service.

Attachment: As Stated

229/2 July 1988